

**CALIFORNIA COASTAL COMMISSION**

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W10a

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## APPEAL STAFF REPORT SUBSTANTIAL ISSUE DETERMINATION

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**Appeal number** ..... **A-3-MCO-04-012, Laube & Engel Residence**

**Applicants** ..... Sheldon Laube & Nancy Engel

**Appellants** ..... Dr. & Mrs Hugh McAllister; and Commissioners Sara Wan and William Burke

**Local government** ..... Monterey County

**Local decision** ..... Approved with conditions, January 13, 2004

**Project location** ..... 36240 Hwy.1 (Kasler Point), approx. 0.5 mile south of Garrapata Creek, Big Sur Coast, Monterey County (APNs 243-251-012 & 243-251-013).

**Project description** ..... Construct a 8,270 sq.ft. single family residence with an approx. 1,824 sq.ft. subterranean garage, including development within 100 feet of environmentally sensitive habitat (ESHA), approx. 1,750 cubic yards of cut and 736 cubic yards of fill, slopes over 30 percent, and a lot line adjustment that will consolidate two (nominal) 2-acre parcels.

**Local approval** ..... The Monterey County Board of Supervisors, upon appeal, approved a Combined Development Permit (including four Coastal Development Permit components), Resolution 03073 (PLN010105), for the project on January 13, 2004.

**File documents** ..... Monterey County certified Local Coastal Program, including Big Sur Coast Land Use Plan; Final Local Action Notice 3-MCO-04-027; documents and materials from the local record provided by Monterey County on February 2, 2004; Coastal Development Permit no. A-174-77 (Sorensen), approved August 3, 1977, and appears to have expired August 3, 1979.

**Staff recommendation** ... **Substantial Issue Exists**

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**Summary of staff recommendation:** The Monterey County approval that is the subject of this appeal is for a 8,270 square foot residential dwelling, with an approximately 1,824 sf subterranean garage. The project includes development within 100 feet of environmentally sensitive habitat, approximately 1,750 cubic yards of cut and 736 cubic yards of fill, slopes over 30 percent, and a lot merger that will consolidate two (nominal) 2-acre parcels. The project is located on the coast along the northern portion of the Big Sur Coast, on a granitic headland, known as Kasler Point. The subject property is located



**California Coastal Commission**  
**September 8, 2004 Meeting in Eureka**

Staff: K. Cuffe Approved by:

adjacent to a 2-acre open space property, owned by the State Coastal Conservancy that has been put in scenic easement to protect seaward views from the Abalone Cove Vista Point, one-half mile south of Garrapata Creek on the Big Sur Coast Highway.

Appeals, submitted by Commissioners Wan and Burke and Dr. and Mrs. Hugh McAllister, raises issues with regards to development within the critical viewshed, and development in the Rocky Point critical viewshed exception area. The McAllister appeal also raises issues regarding demonstration of visual impacts, development in hazardous areas, protection of environmentally sensitive habitat (coastal scrub and marine and rocky near-shore), as well as procedural issues regarding the County's processing of a project when an existing Coastal Commission permit was in force.

The project raises critical and substantial issues with respect to conformance with LCP policies that protect visual and scenic resources, environmentally sensitive habitat areas, coastal hazards and water quality policies. Due to these issues, staff recommends that the Commission find **a substantial issue** with respect to the grounds in which the appeal has been filed and take jurisdiction over the coastal development permit for this project.

First, the project approved by the County, located between Highway One and the sea, will be visible from the Highway and has not been sited and designed to minimize impacts to the viewshed as required by the LCP. The County's findings acknowledge that the proposed house is visible from Highway One, but the County's final action does not require any design modifications to reduce the size or height of the structure in order to minimize views of it as required by the LCP. Given that a previous 3,950 sf home was approved on this site that would not be visible within the critical viewshed, there is no justification to approve a larger, over 10,000 sf structure that does not meet the scenic resource protection policies when other measures can be taken to further minimize views of the structure as required by LCP policies. Therefore, the project as approved **raises a substantial issue with regards to scenic resources**.

Second, the biological survey conducted for the project in 1999 states that approximately 120 seacliff buckwheat plants (out of 130 total) would be removed by the project. The Big Sur LUP describes rare and endangered species habitats as environmentally sensitive habitat areas. Seacliff buckwheat (*Eriogonum parvifolium*) is one of only 2 host plants for the endangered Smith's blue butterfly, which spends its entire life cycle associated with these plants, and so as a critical habitat for this rare and endangered species, is considered environmentally sensitive habitat. While the County required replacement of the seacliff buckwheat plants at a 3:1 replacement ratio, it did not require that the development avoid these sensitive habitat areas, as required by the County's LCP ESHA policies. Since the County's approval allows for removal and mitigation of this sensitive habitat, rather than avoidance through redesign or reduction of structural footprint, the County's action **raises a substantial issue with regards to protection of environmentally sensitive habitat**.

Third, while the geological report recommends that structures be located at least 15 feet from the blufftop neither the geologic report nor the geotechnical report includes any assessment of slope stability or evidence or rationale to ensure that a 15-foot setback would be adequate to avoid the need for seawalls during the development's lifespan. In fact, both the geological and geotechnical reports



infer that shoreline protection measures may be needed along the southwestern shoreline in the future. Monterey County LCP Policy requires adequate setbacks to assure the development will not need shoreline protection during the life of the structure, and that geologic reports provide evidence that permitted development will not create geologic hazards or diminish the stability of the area. Onsite drainage also may increase erosion and decrease geological stability of the site. Thus, the project as approved by the County **raises a substantial issue with regards to Geologic hazards.**

Fourth, according to the County's approval, water will be supplied to the site by the Garrapata Water Company, which draws from Garrapata Creek baseflow. The LUP lists Garrapata Creek as a steelhead stream and water resource protection policies require that the impacts of all new development proposals on these streams be considered; however, the County's action does not include any discussion of this requirement. As the proposed development would cumulatively add to the amount of water diverted from the Garrapata basin, such evaluation is necessary to ensure that no significant impacts to the natural integrity of the stream will result from the approved development. Furthermore, the Garrapata Water Company is out of compliance with State safe water drinking standards, and may already be drawing more water than they have been allocated. After being informed by the county that the water system would have to be modified to come into compliance with State safe drinking requirements, 1) the owners of the Garrapata Water Company sued the County over its requirements that the system be modified to meet state requirements; 2) the Court found against the owners, who were forced to abandon the system; 3) the owners have continued to operate the system even though the County is looking for a new receiver to own and operate the system; and 4) other current users are trying to find a way to operate the water supply system as a mutual water system. Since these facts raise concerns that project may not actually have an adequate, safe and continuous supply of water, and the expansion of the proposed water source may have cumulative adverse impacts on the condition of Garrapata Creek steelhead, approval of the project **raises a substantial issue with regards to water supply and protection of water resources.**

Finally, the proposed building site is on shallow coastal terrace colluvium over granite bedrock. Storm water runoff and septic system leachates from the development have the potential to adversely impact adjoining tidepools and rocky intertidal habitats that are part of the Monterey Bay National Marine Sanctuary. While some risk reduction may be achieved through relocation of the septic system farther away from the bluff edge and use of a pump, the County failed to require that alternative designs be considered that would reduce the potential for sediments and septic system leachate, through reduced project sizing. Thus, the project **raises a substantial issue with regards to LCP water resource and water quality protection policies.**



## Staff Report Contents

1. Appeal of Monterey County Decision.....	5
A. Local Government Action.....	5
B. Summary of Appellants' Contentions .....	5
C. Appeal Procedures .....	6
2. Staff Recommendation on Substantial Issue .....	7
3. Recommended Findings and Declarations.....	8
A. Project Location .....	8
B. Project Description .....	8
C. Procedural Issues .....	10
D. Substantial Issue Evaluation.....	11
1. Visual Resources .....	11
a. Applicable Policies.....	11
b. Analysis of Consistency with Applicable LCP Policies .....	14
c. Conclusion .....	15
2. Environmentally Sensitive Habitat Areas .....	16
a. Applicable Policies.....	17
b. Analysis of Consistency with Applicable LCP Policies .....	17
c. Conclusion .....	19
3. Hazards.....	20
a. Applicable Policies.....	20
b. Analysis of Consistency with Applicable LCP Policies .....	20
c. Conclusion .....	22
4. Water Resources.....	22
a. Applicable Policies.....	22
b. Analysis of Consistency with Applicable LCP Policies .....	24
c. Conclusion .....	26
5. Exhibits	
Exhibit 1: Project Vicinity and Location Maps	
Exhibit 2: Project Site Plans and Elevations	
Exhibit 3: County's Final Local Action Notice for Laube/Engel (PLN010105)	
Exhibit 4: Appellant's Contentions – Commissioners Wan and Burke	
Exhibit 5: Appellant's Contentions – Dr. and Mrs. Hugh McAllister	
Exhibit 6: Site Photos	
Exhibit 7: Biological Map	



## 1. Appeal of Monterey County Decision

### A. Local Government Action

On January 13, 2004, the Monterey County Board of Supervisors, upon appeal and *de novo* hearing, approved a Combined Development Permit (including four Coastal Development Permit components), Resolution 04028 (PLN010105), for the project, which allowed construction of a 8,270 square foot (sf) residential dwelling, with an approximately 1,824 sf subterranean garage, including development within 100 feet of environmentally sensitive habitat, approximately 1,750 cubic yards of cut and 736 cubic yards of fill, construction on slopes over 30 percent, and a lot line adjustment that will consolidate two (nominal) 2-acre parcels. See Exhibits 1 for location maps, and Exhibit 2 for project site plans. A copy of the County approval is attached as Exhibit 3.

Notice of the Monterey County Board of Supervisor's action on the CDP was received in the Commission's Central Coast District Office on February 2, 2004. The Coastal Commission's ten-working day appeal period for this action began on February 3, 2004 and concluded at 5:00 P.M. on February 18, 2004. Two valid appeals were received by the Central Coast District Office during this appeal period from: 1) Commissioners Wan and Burke and 2) Dr. and Mrs. Hugh McAllister. The reasons for the appeal submitted by Commissioners Burke and Wan are attached to this report as Exhibit 4. And, the reasons for the appeal submitted by Dr. & Mrs. Hugh McAllister are attached to this report as Exhibit 5.

### B. Summary of Appellants' Contentions

The project has been appealed to the Coastal Commission on the basis that it is inconsistent with a substantial number of different policies and implementing ordinances of the Monterey County Local Coastal Program (LCP). In particular, the following LCP conflicts and issues are highlighted in the appeals received:

- 1) Scenic views - Both appeals raise the issue of scenic view protection. The appeals contend that the project is inconsistent with applicable standard of review for evaluation visual impacts and appropriate requirements, that the project is not in an exception area, and that the project inconsistent with standard of review used by County. The McAllister appeal also raises the issue that the applicant's visual representation of the project failed to conform to the LCP requirement for demonstration of visual impacts.
- 2) Hazard avoidance - The McAllister appeal raises the issue of conformance with LCP policies for development in hazardous areas.
- 3) Environmentally sensitive habitat areas - The McAllister appeal raises the issue of conformance with LCP policies for protecting environmentally sensitive habitat areas.
- 4) Water quality protection - The McAllister appeal also raises the issue of conformance with LCP policies for protecting water resources.



- 5) Procedural questions - The County's approval of this application presents a number of unresolved jurisdictional and procedural issues. These issues include, but are not limited to, the following:
- a) The Coastal Commission appeal notes that the County action references the Coastal Commission's earlier permit for a home on this site and the need to amend that permit. Specifically, the State Coastal Commission, upon appeal from the Regional Coastal Commission, granted Coastal Development Permit no. A-174-77 for a 3,950 square foot residence to Donald Sorensen on August 3, 1977. Permittee accepted the permit, recorded a scenic easement and commenced grading, installed water connections, constructed a driveway and commenced construction of the residence (which has not proceeded beyond the foundation). However, the permit also required merger of the two lots comprising the site prior to construction, but it appears that this was never accomplished by the permittee. Thus any work done on the project was in violation of the conditions of the permit and cannot be used to assert that the permit was exercised. The County was originally advised that the Coastal Commission would be the appropriate venue for consideration of amended plans. The applicants nonetheless pursued a separate CDP application for a significantly different project with the County for this site. Thus, a question is raised as to the proper procedure that the Coastal Commission should follow in considering this item.
  - b) As pointed out by Appellant McAllister, the current plans approved by the County would not be consistent with the CDP issued by the Coastal Commission and would violate the terms of approval that were adopted in 1977.
  - c) Appellant McAllister asserts that there are pending grading and construction violations that, under the County's LCP procedural rules, should have precluded action on the application.

### C. Appeal Procedures

Coastal Act Section 30603 provides for the appeal of approved coastal development permits in jurisdictions with certified local coastal programs for development that is (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tideline of the sea where there is no beach, whichever is the greater distance; (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff; (3) in a sensitive coastal resource area; (4) for counties, not designated as the principal permitted use under the zoning ordinance or zoning district map; and (5) any action on a major public works project or energy facility. This project is appealable to the Coastal Commission because it is located between the first public road and the sea; and, because it is less than 300 feet from the edge of the coastal bluff.

The grounds for appeal under Section 30603 are limited to allegations that the development does not conform to the standards set forth in the certified LCP or the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct a de novo coastal development permit hearing on an appealed project unless a majority of the Commission finds that "no substantial



issue” is raised by such allegations. Under Section 30604(b), if the Commission conducts a *de novo* hearing, the Commission must find that the proposed development is in conformity with the certified local coastal program in order to approve the project. Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act, if the project is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone. This project is located between the first public road and the sea and thus, this additional finding would need to be made in a *de novo* review in this case.

The only persons qualified to testify before the Commission on the substantial issue question are the Applicant, persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing. Any person may testify during the *de novo* stage of an appeal.

## 2. Staff Recommendation on Substantial Issue

The staff recommends that the Commission determine that **a substantial issue exists** with respect to the grounds on which the appeals were filed pursuant to Coastal Act Section 30603.

**MOTION:** *I move that the Commission determine that Appeal No. A-3-MCO-04-012 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

**STAFF RECOMMENDATION OF SUBSTANTIAL ISSUE:** Staff recommends a **NO** vote. Failure of this motion will result in a *de novo* hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

**RESOLUTION TO FIND SUBSTANTIAL ISSUE:** The Commission hereby finds that Appeal No. A-3-MCO-04-012 presents a **substantial issue** with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.



### 3. Recommended Findings and Declarations

The Commission finds and declares as follows:

#### A. Project Location

The subject property includes two parcels (APNs 243-251-012 and 243-251-013) that are each 2 acres in size and are located between Highway One and the sea, approximately 10 miles south of Carmel, and one-half mile south of Garrapata Creek, on a granitic headland known as Kasler Point (see Exhibit 1 and site photos shown in Exhibit 6). The State Coastal Conservancy's 2-acre open space property sits north of the subject property, immediately south of Abalone Cove, and protects seaward views from the Abalone Cove Vista Point along the Big Sur Coast Highway. As shown on the location a map, the southern parcel (APN 243-251-012) contains a rocky shoreline bounded on the southwest and west by the Pacific Ocean, along the northeast by the northern parcel, and along the east by Highway One. The northern parcel is bounded on the north by the rocky shoreline within Abalone Cove, and to the east by the Conservancy parcel and Highway One.

The site contains an existing graded (unpaved) access driveway, concrete gutter and excavated/graded building pad from work conducted in violation of the terms of the previous coastal development permit issued to Sorenson in 1977. The 1977 Sorenson staff report described Kasler Point, prior to grading, as a dome shaped, rocky headland jutting into the Pacific Ocean. However, the site has since been excavated to create a building pad for the residential development, with a nearly vertical westerly facing wall about 70 to 100 feet from the blufftop (top elevation of cut face about 90 feet), and a fairly level base at an elevation of about 65 feet. Construction of the approved dwelling was never completed however, and other abandoned improvements related to earlier development efforts include reinforced concrete footings, drain lines, inlets and culverts, water lines and underground utility trenches and a septic system. Additionally, the old building pad was constructed with a cut and fill grading operation. Historic fill material appears to have been spread in the saddle, between Kasler Point and the excavated pad area, as well as on the edge of the slope northwest of the old building pad. The area is underlain by dense granitic bedrock overlain with terrace deposit materials that include gravelly, silty and clayey sand.

According to the geotechnical review conducted by Haro Kasunich, surface drainage currently runs down the driveway to an area just south of the graded pad. Two storm drains are located on the property to collect the runoff. One of the storm drains is located to collect stormwater runoff from the driveway drainage, the second, located on the north side of Kasler Point was probably designed to collect runoff from the entryway and yard area. Both stormwater culverts discharge onto granite bedrock.

#### B. Project Description

The project approved by the County is for development of an 8,270 sf single family dwelling with an approximately 1,824 sf subterranean garage (which includes a wine cellar, elevator, bathroom, and





mechanical room) for a total 10,094 sf residence; grading of approximately 1,750 cubic yards of cut and 736 cubic yards of fill that involves cutting into slopes over 30 percent; development within 100 feet of an environmentally sensitive habitat; and a lot line adjustment that consolidates the two lots (APNs 243-251-012 and 243-251-013) into one lot.

As described above, the subject property was partially developed by previous owners (Sorenson). The proposed project intends to use generally the same access driveway and building site as that graded by the previous owner. The design approved by the County includes a large two-story dwelling, with additional lower level basement that includes the attached garage, wine cellar, bathroom, and mechanical room, and driveway with garage entrance and turnaround area (site plans are shown in Exhibit 2).

In plan view, the proposed house is somewhat semi-circular in shape, with an oval shaped theater/media room along the northern end. While originally proposed with the driveway and garage along the west side of the structure, the approved plan shows the house tucked in close to the nearly vertical cut face (fractured granite bedrock, with cut face inclined at about ½:1 to 1:1) and the driveway and underground garage are located along the east, or landward side of the structure. Catchment/retaining walls of up to about 20 feet high are proposed to accommodate the driveway, basement garage and north wing of the house. As designed, the house would extend about 80 to 90 feet out from the cut face. A turnaround is located to the south of the homesite, and a deck is shown along the southwest side of the house, within 15 feet of the top of the seacliff. As shown on the topographic map, the top of the bluff is about 50 to 60 feet above mean sea level. The northern segment of the house (the oval theater/media room) would be located adjacent to the northern parcel, and require further excavation of the cut slope, which would reduce how far the structure extends out onto the terrace, and reduce visibility of that portion of the structure. The design would use the existing 540-foot long access driveway, to be surfaced with crushed granite.

The house will be constructed using concrete, glass and wood framing. Floors will consist of conventional concrete slabs, and the structure will use a pier and beam foundation system with footings that penetrate overlying fill and colluvium and are embedded at least 2 to 5 feet into the granite bedrock beneath the house footprint. Where native granite is not encountered at the slab sub-grade, concrete slabs would be constructed on compacted fill.

According to the geotechnical review conducted by Haro Kasunich, excavations for the below grade garage and driveway entryway will require cuts of 8 to 16 feet. Plans approved by the County show the elevation of the garage and entry driveway at an elevation of 54 feet based on site and drainage plans dated November 4, 2002. The turnaround area south of the garage entryway is at elevation 64.

The building will require additional grading for excavation of the basement and foundations, with 1,750 cubic yards of cut and 736 cubic yards of fill.

Currently, three side-by-side manhole covers, which service the existing septic holding tanks and a pump station, are located in old compacted fill, close to the seacliff. Geotechnical recommendations have been made that these facilities be relocated at least 15 feet from the seacliff, or shoreline protection



would be necessary to protect them from future sliding and/or erosion. According to the revised Geotechnical Report, submitted by Vicki Odello, C.E., dated December 2002, a pump-up septic system and leach fields have already been approved by the County and have already been installed as part of the prior development permit. The leach fields are located about 200 feet southeast of the house, and about 40 feet up-slope from the house site on the east side of the ridge.

According to the Geotechnical review, although the site includes remains of the previous development, all improvements would be removed except for the driveway and leach fields.

### C. Procedural Issues

With regards to the procedural issues, the Coastal Commission granted an earlier permit for a single family dwelling in 1977 to Sorenson (Permit # A-174-77). The permit was for approval with conditions for a 3,950 sf, three-bedroom house on the site (designed as a rectangular structure that stepped into the hillside, with two stories and a basement level garage). The permit incorporated nine special conditions originally established by the Regional Commission, and three additional Conditions established by the State Coastal Commission. In particular, Regional Commission Special Condition #3 required that prior to commencement of grading or construction, permittee show that Parcels 243-251-012 and -013 had been consolidated and recorded as a single parcel of land, and Regional Commission Special Condition #4 required that construction not commence until an easement for protection of scenic and natural resources was granted to an appropriate public agency or conservation foundation. The easement, was to include provisions to prevent disturbance of native plants and wildlife; to exclude damage by livestock; to provide for maintenance needs; and to specify conditions under which non-native plant species may be controlled, public access allowed, unsafe activity prevented, and entry for archaeologic and other scientific research purposes secured.

During review of this current proposal, Commission staff recommended to the County staff that the applicants request for a new residence should be considered an amendment to the original 1977 Sorenson CCC permit, based on staff's belief that the original permittee had exercised the permit, as evidenced by partial development on site. (The previous applicant had recorded a scenic easement and excavated part of the western slope for a building pad, installed foundation footings, septic, utility lines, and graded an access driveway). However, it has since been determined that Sorenson never combined the two lots as required by the Commission's permit, and so the work done was in violation of permit conditions. Sorenson never completed any further development of the site. Work done in violation of permit conditions is illegal and cannot be used to assert that the permit has been exercised. Since no extension of the 1977 permit occurred (or was requested) the Sorenson CDP appears to have expired in 1979. Eventually, the property was sold to Laube/Engel, the current property owners; whose application for development in the same general building site is the subject of this appeal.

After discussions with Commission staff Counsel, it has been determined that, since the prior to construction conditions of the Coastal Commission permit were never fulfilled, the development that was conducted on the subject property was performed in violation of permit conditions and in violation of the California Coastal Act. Since Commission approval of the Sorenson project was granted for a



period of two years, and permit conditions were never fully complied with during that time, the permit appears to have expired, and the development on the site is a violation. The County now has a certified LCP, and as such has been granted the authority to regulate development in the coastal zone, with the Commission retaining appeal jurisdiction in the Big Sur Coast. Thus the Commission finds that the County was correct to have processed a coastal development permit application for the project. As a result of carrying out their permit authority, the County has approved a project, which has been appealed to the Commission.

## D. Substantial Issue Evaluation

The Appellant's, Commissioners Wan and Burke, and Big Sur Coast resident Dr. and Mrs. Hugh McAllister, have appealed the final action taken by Monterey County, on the basis that approval of the project is inconsistent with policies and ordinances of the Monterey County certified Local Coastal Program. Having resolved the procedural issues raised by the appeal above, the remaining appeal contentions fall generally into four areas: 1) visual and scenic resources; 2) hazards; 3) environmentally sensitive habitat areas; and 4) water quality. As described below, several of these concerns raise a substantial issue with respect to the project's conformance with the Monterey County LCP.

### 1. Visual Resources

The appellants' contend that, as approved by the County, the project is inconsistent with applicable scenic view protection policies, and that the County used the incorrect standard of review for evaluating impacts in the critical viewshed.

#### a. Applicable Policies

The County's LCP is protective of visual resources within the Big Sur Critical Viewshed

Specifically, the Big Sur Coast Land Use Plan's Critical Viewshed Policy states:

**3.2.1 Key Policy** - *Recognizing the Big Sur coast's outstanding beauty and its great benefit to the people of the State and Nation, it is the County's objective to preserve these scenic resources in perpetuity and to promote the restoration of the natural beauty of visually degraded areas wherever possible. To this end, it is the County's policy to prohibit all future public or private development visible from Highway 1 and major public viewing areas (the critical viewshed), and to condition all new development in areas not visible from Highway 1 or major public viewing areas on the siting and design criteria set forth in Sections 3.2.3, 3.2.4, and 3.2.5 of this plan. This applies to all structures, the construction of public and private roads, utilities, lighting, grading and removal or extraction of natural materials.*

The Big Sur Coast Planning Area Land Use Plan (LUP) Policy 3.2.2 defines the Critical Viewshed as everything within sight of Highway 1 and major public viewing areas including turnouts, beaches and specific locations including, among others, Soberanes Point and Garrapata Beach.



Exceptions to Key Policy 3.2.1 are provided for in certain specific cases, including vacant parcels in the Rocky Point Area (LUP Policy 3.2.5.F). Big Sur Coast LUP Policy 3.2.5.F defines the Rocky Point exception area as follows:

**3.2.5.F Rocky Point Area Vacant Parcels.** *Existing vacant residential parcels in the critical viewshed between Highway 1 and the sea, from (and including) the southernmost existing residential parcel on Rocky Point, to the northernmost developed residential parcel on Kasler Point and from the southernmost developed parcel north of Abalone Cove to the northernmost developed parcel south of Garrapata Creek...*

At the time of LCP certification, the Sorenson permit had been granted for development, on the southern parcel with a scenic conservation easement over the remainder and the entire northern parcel. Thus parcel 243-251-012 was considered the northernmost developed parcel on Kasler Point, and thus within the Rocky Point exception area. Policy 3.2.5.F allows that parcels within the Rocky Point exception area be permitted to be used for residential development, subject to the policies of Section 3.2.4 of this plan [titled: Land Not in the Critical Viewshed] and the following standards outlined in 3.2.5.F:

*Additional standards shall include keeping driveways as narrow as possible, avoiding paving where practical and consolidation of driveways; the use of roof and surface treatments, colors and materials which will visibly blend with the surrounding environment; **the use of berming and other measures designed to minimize views of structures without blocking ocean vistas seen from Highway 1**; prohibiting the dumping of excavated materials over the coastal bluff, and additions, antennae, night flood lighting, or other improvements in view of Highway 1 without separate permit consideration; and dedication of scenic easement over undeveloped portion of lot. Guesthouses shall be attached to the main dwelling except where they can be sited to better implement these policies.*

Section 3.2.4 contains the following policies for land not in the Critical viewshed:

**3.2.4.A.1.** *So that the visual continuity may remain undisturbed, the design and siting of structures, whether residential, commercial, agricultural, or public, and access thereto, shall not detract from the natural beauty of the undeveloped skylines, ridgelines, and the shoreline.*

**3.2.4.A.2.** *New applicants, when selecting a building site, must consider the visual effects upon public views as well as the views and privacy of neighbors. **The portion of a parcel least visible from public viewpoints will be considered the appropriate site for the location of new structures.** New structures shall be located where existing topography or trees provide natural screening and shall not be sited on open hillsides or silhouetted ridges. Sites shall not leave excavation scars or slope disturbance. Structures and access roads shall be designed to minimize alterations of the natural landform and to avoid, insofar as feasible, removal of healthy tree cover.*



3.2.4.A.3. *New development should be subordinate and blend with its environment, using materials or colors that will achieve that effect. Where necessary, appropriate modifications will be required for siting, structural design, size, shape, color, textures, building materials, access, and screening.*

3.2.4.A.4. *Landscape screening may be used wherever a moderate extension of native forested and chaparral areas is possible. Other screening must be of similar plant or tree species.*

3.2.4.A.5. *Sites for new structures shall be selected to avoid the construction of visible access roads and minimize the extent of environmental and engineering problems resulting from road construction.*

3.2.4.A.6. *New roads providing residential, recreational, or agricultural access will be considered only where it has been demonstrated that the use of existing roads is not feasible, or that permission for the use of an existing road is shown in writing to be unobtainable from neighboring property owners.*

3.2.4.A.7. *New roads shall avoid steep slopes and shall be located along the margins of forested areas, along natural land contours, or within existing vegetation. Road shall be aligned to minimize removal of native trees, and constructed to minimum standards consistent with the requirements of fire safety and emergency use. Drainage and erosion control measures must be adequate to prevent erosion. During road construction, side-casting of earth materials shall not be permitted; all materials not used for on-site fill shall be removed from the area.*

Regulations for development not within the critical viewshed include:

20.145.030.C.2.a. *All structures, whether, residential, commercial, agricultural, or public, and access thereto, shall be designed and sited so as not to detract from the natural beauty of the undeveloped skylines, ridgelines, and the shoreline. (Ref. Policy 3.2.4.A.1)*

20.145.030.C.2.b. ***Buildings shall be located so as to minimize their visual impact upon public views*** as well as the views and privacy of neighbors. *New structures shall be located on that portion of a parcel least visible from public viewpoints.*

*New structures shall be located where existing topography or trees provide natural screening and shall not be sited on open hillsides silhouetted ridges. Sites shall not leave excavation scars or slope disturbance. Structures and access roads shall be designed to minimize alterations of the natural landform and to avoid, insofar as feasible, removal of healthy tree cover. (Ref. Policy 3.2.4-A-2, 3.7.3.A.1 and 5.4.3.L.4)*

20.145.030.B.6.e. *New structures shall be sited so as to avoid the construction of visible access roads and minimize the extent of environmental and problems engineering resulting from road construction. (Ref. Policy 3.2.4.A.5)*

The Big Sur LUP also includes recommended action 3.2.6.3. that state that



*Where no other feasible mitigation measures for eliminating the adverse visual impacts of new development in the critical viewshed are available, the County may institute and utilize a Transfer of Development Credits (TDC) system that will permit development credits for a parcel determined to be developable except for the critical viewshed restrictions. Such credits may be transferred at the owner's option to a receiving parcel not in the viewshed and otherwise found to be suitable for an increased density of development. The use of transferred credits will be allowed as a conditional use under this Plan. However, the increase in residential density on the receiving parcel shall not exceed twice that which is specified by Section 5.4 of this Plan, except where: a) an environmental impact analysis reveals site suitability for more units; b) traffic impacts will be mitigated through reduction in the number of driveway encroachments onto Highway 1; and c) consistent with all other standards listed in this Plan.*

*Critical viewshed parcels protected under a TDC system shall be secured through enforceable restrictions (e.g., scenic easement dedication), subject to County Counsel review and approval of the applicable documents.*

#### b. Analysis of Consistency with Applicable LCP Policies

The Big Sur Coast Land Use Plan (LUP) visual resource Key Policy section 3.2.1 generally prohibits new development in the Critical Viewshed, i.e., visible from Highway 1 and other defined public vantage points. The purpose of this LCP policy is to protect the Big Sur Coast's highly scenic views, enjoyed by millions of visitors per year, from the individual and cumulative impacts of development. Such protection is achieved, in part, by requiring that new projects be concealed from public view. However, as approved by the County, this project, located between Highway 1 and the sea, will be visible from the Highway and has not been sited and designed to avoid impacts to the Critical Viewshed as required by the LCP.

As acknowledged by the County findings, the proposed house will be visible from Highway 1. The findings incorrectly state that the project is not located within the Critical Viewshed, however if it is visible from Highway One and major public viewing areas including turnouts, it is by definition within the critical viewshed.

The Big Sur Coast LUP provides some exceptions to the strict application of Key Policy 3.2.1 in certain specific cases where vacant lots exist in certain partially-developed residential enclaves located in the Critical Viewshed--including the nearby Rocky Point area. As described above, the Rocky Point exception area is defined in LUP Policy 3.2.5.F as "existing vacant residential parcels in the critical viewshed between Highway 1 and the sea, from (and including) the southernmost existing residential parcel on Rocky Point, to the northernmost developed residential parcel on Kasler Point." Since development had been already been approved on APN 243-251-012 (the southern parcel of the subject site) prior to certification by the Commission, it was understood that this parcel was located in the Rocky Point Exception area. However as the northern parcel was not to have any development on it, it was understood that this parcel was not part of the Rocky Point exception area.



While it can be argued that since the site was never actually developed in accordance with the permit granted by the Coastal Commission it could still be considered a vacant parcel (other than what structural ruins remain), staff involved in the creation of the Big Sur LUP concede that the southern parcel was considered at the time of certification to be part of the Rocky Point Exception area, therefore, the County used the correct standard of review when it evaluated the project in regards to the Rocky Point exception area, which requires the County to apply policies for land not in the critical viewshed when evaluating residential development.

However, it is important to note that LUP Policy 3.2.5.F also provides specific requirements for development in the Rocky Point Exception area. Although it is often incorrectly referred to as an “exemption area,” location in a residential “exception area” does not mean that “anything goes” or that the lot is somehow no longer in the Critical Viewshed. Instead, the exception area standards allow residential use on existing lots in the Critical Viewshed if measures are incorporated to insure that visual impacts are minimized and do not block ocean vistas as seen from Highway 1 (LUP 3.2.5.F). The policies call for siting on the portion of the lot least visible from public viewpoints (LUP 3.2.4.A.2). Modifications for siting, design, size and access are required where needed to insure that new development be designed to blend in with, and be subordinate to, the natural environment (LUP 3.2.4.A.3). And dedication of a scenic easement over the undeveloped portion of the lot is required (LUP 3.2.5.F, and CIP Section 20.145.030.B).

In this case, the 10,000+ sf structure (8,270 sq.ft. single family dwelling + 1,824 sf garage/wine cellar/bath/mechanical room) is far too large to blend in with, and be subordinate to, the natural environment. As noted by appellant McAllister, the location on the property is not “the least visible” location on the property, because alternatives are available for minimizing impacts on Highway 1 views, including a substantial reduction in size, and alternative orientation or siting on the lots so that no portion of the structure would be visible from public viewing areas. Given the large landmass between Highway One and the excavated building pad, the 25 foot high cut slope that has already been excavated at the site, and the fact that the project is already planning further excavation for a lower level garage, it is not unreasonable to expect a structure could be sized and located so that it would not extend beyond the ridgeline and into the critical viewshed. The previous coastal permit (A-174-77 Sorensen) for a 3,950 sq.ft. residence demonstrates that it would be feasible to minimize visual impacts, to the point where a smaller-sized structure would not be seen at all. But, as currently designed, the project’s size, height and visually prominent location prevent conformance with the LCP’s visual resource protection policies for views seen from Highway 1. Therefore, the project clearly is not consistent with LCP standards for the Rocky Point exception area.

### c. Conclusion

The project approved by the County, located between Highway One and the sea, will be visible from the Highway and has not been sited and designed to minimize impacts to the viewshed as required by the LCP. The County’s findings acknowledge that the proposed house is visible from Highway One, but the County’s final action does not require any design modifications to reduce the size or height of the structure in order to minimize views of it as required by the LCP. Given that a large, 3,950-sf home was



approved on this site that would not be visible within the critical viewshed, there is no justification to approve an even larger, nearly 10,000 sf structure that does not meet the scenic resource protection policies when other measures can be taken to further minimize views of the structure as required by LCP policies.

In this case, it is demonstrably feasible to conceal even a large home from Critical Viewshed vantage points. The County applied 26 conditions of approval, but these will not result in the modifications needed to conform with LUP policies. (County Findings and Conditions of Approval attached as Exhibit 3.)

Thus, as proposed, the project does not meet the visual and scenic resource protection standards of the LCP because additional measures can be taken to minimize the structure and to make the development subordinate to, and blend with, the rural character of the area, therefore, the project as approved **raises a substantial issue with regards to scenic resources.**

## 2. Environmentally Sensitive Habitat Areas

The McAllister appeal raises the issue of conformance with the LCP's policies for protecting environmentally sensitive habitat areas. The project's Biological Assessment report notes the presence of a plant species—seacliff buckwheat (*Eriogonum parvifolium*) — that is a host plant for the Federally-endangered Smith's blue butterfly and is an indicator for environmentally sensitive habitat, and notes that the project has the potential to disrupt environmentally sensitive Smith's blue butterfly habitat and rocky intertidal and nearshore habitats adjacent to the site.

The Smith's Blue Butterfly (*Euphilotes enoptes smithii*) is a federally endangered butterfly species, that historically ranged along the coast from Monterey Bay south through Big Sur to near Point Gorda, occurring in scattered populations in association with coastal dune, coastal scrub, chaparral, and grassland habitats. They spend their entire lives in association with two buckwheat plants in the genus *Eriogonum*, one of which is *Eriogonum parvifolium*. Emerging in late summer and early autumn, the adults mate and lay eggs on the flowers of these host plants. The eggs hatch shortly thereafter and the larvae begin to feed on the flowers of the plant. Following several weeks of feeding and development, the larvae molt to a pupal stage, beginning a ten-month period of transformation. The following year, as the *Eriogonum* again flower, the new adults emerge.

While seacliff buckwheat itself is not a listed species, it is one of only two *Eriogonum* species that serves as a host plant for the endangered Smith's blue butterfly, and so is considered an environmentally sensitive habitat when it is located within the range of Smith 's Blue Butterfly. Biological surveys conducted on the subject parcel in 1999 identified the presence of numerous seacliff buckwheat plants within areas of the site that would be affected by the proposed development, and indicated that approximately 120 plants (out of a total of 130 plants) would be removed.

The 1999 Biological report also indicates that the Kasler Point area, where the project site is located, is located at the heart of the range of the Southern sea otter (*Enhydra lutris nereis*), which is listed as





threatened under the Federal Endangered Species Act. The biological report indicates that construction activities occurring between December and March could affect sea otter pupping (by causing sea otters to abandon their pups if disturbed), and additional project excavation material and stormwater runoff may enter the inter- and sub-tidal zones, which would adversely impact nearshore invertebrate habitats used for foraging by the Southern sea otter. Since this population has undergone five successive years of population decline, such affects would be deleterious to this already threatened species.

a. Applicable Policies

Relevant LCP policies include the following:

**3.3.1 Key Policy** - *All practical efforts shall be made to maintain, restore, and if possible, enhance Big Sur's environmentally sensitive habitats. The development of all categories of land use, both public and private, should be subordinate to the protection of these critical areas.*

**3.3.2.1.** *Development, including vegetation removal, excavation, grading, filing, and the construction of roads and structures, shall not be permitted in the environmentally sensitive habitat areas if it results in **any potential disruption of habitat value**. To approve development within any of these habitats the County must find that disruption of a habitat caused by the development is not significant.*

**3.3.2.3.** *The County shall require deed restrictions or dedications of permanent conservation easements in environmentally sensitive habitats when new development is proposed on parcels containing such habitats. Where development has already occurred in areas supporting sensitive habitat, property owners should be encouraged to voluntarily establish conservation easements or deed restrictions.*

**3.3.2.4.** *For developments approved within environmentally sensitive habitats, the removal of indigenous vegetation and land disturbance (grading, excavation, paving, etc.) associated with the development shall be limited to that needed for the structural improvements themselves. The guiding philosophy shall be to limit the area of disturbance, to maximize the maintenance of the natural topography of the site, and to favor structural designs which achieve these goals.*

**3.3.3.B.1.** *Development on parcels adjacent to intertidal habitat areas should be sited and designed to prevent percolation of septic runoff and deposition of sediment.*

**3.3.3.B.4.** *Site design techniques intended to screen structures from view of Highway 1 shall not involve major land modification that may impact adjacent marine habitats.*

b. Analysis of Consistency with Applicable LCP Policies

The LCP gives high priority to the protection of the Big Sur Coast's environmentally sensitive habitat areas (ESHAs). When developments must occur within ESHAs, LUP Policy 3.3.2.4 calls for limiting the removal of indigenous vegetation and favors those designs that minimize land disturbance. And,



siting and design of development on parcels adjacent to intertidal habitat areas is subject to LUP Policy 3.3.3.B.1, regarding septic system percolation and sedimentation impacts.

As described above, a biological survey of the site was conducted in 1999 and identified potential impacts of the project and mitigation measures. The report indicated that approximately 120 seacliff buckwheat plants (out of 130 total) would be removed by the project, and recommended they be replanted at a 3:1 replacement ratio. Although no overlay of the project design on the biological mapping was developed and submitted by the applicant, an eyeball comparison of the biological map included in the 1999 report (Exhibit 7), and the site plan for development approved by the County (Exhibit 2b), conducted by staff concludes that at least three different groupings of seacliff buckwheat would be removed due to various project elements (i.e., 30 plants are located in or adjacent to the proposed driveway, a larger patch of 75 plants would be destroyed by the driveway and turnaround, and perhaps the southern end of the house, and a small patch of 4 plants would be taken out by the house itself).

The Big Sur LUP includes rare and endangered species habitats as environmentally sensitive habitat areas. As described above, seacliff buckwheat (*Eriogonum parvifolium*) is one of only 2 host plants for the endangered Smith's blue butterfly, which spends its entire life cycle associated with these plants, and so as a critical habitat for this rare and endangered species, is considered as environmentally sensitive habitat.

The project biologist conducted additional surveys, based on Fish and Game protocol, to determine presence or absence of the butterflies on the site, but did not observe any Smith's blue butterflies during ten days of observations conducted between June 25 and August 25, 2003. However, the same survey identified that Smith's blue butterflies were found ½ mile north of the subject site in the Garrapata Creek watershed (on the one day that this control site was used) and at a second control site 3 miles north of the site. According to an email response from the U.S. Fish & Wildlife Service (submitted by appellant McAllister), negative survey results from a single year are not conclusive, and it should not be concluded that the species does not use the site.

The County's approval of the project identified policies for development adjacent to ESHA, but not within ESHA, as it should have, given that it noted the project would remove 120 seacliff buckwheat plants. Removal of this number of plants could greatly reduce the habitat available to this sensitive species, especially since much of the site is dominated by invasive, non-native iceplant (*Carpobrotus edulis*). While the County required replacement of the seacliff buckwheat plants at a 3:1 replacement ratio, it did not require that the design be minimized to avoid removal of these sensitive habitat areas, although the house was relocated from its original proposed location in an attempt to reduce visibility (the house was moved south from its original layout to move it off the northern parcel completely). But no efforts were made to reduce the footprint of the project to avoid impacts to the seacliff buckwheat plants that make up the Smith's Blue Butterfly habitat.

LUP policy 3.3.2.3 requires deed restrictions or dedications of permanent conservation easements in environmentally sensitive habitats when new development is proposed on parcels containing such habitats. The County did condition the permit to require a scenic and conservation easement "over the entire newly created parcel [i.e., the merged parcel], exclusive of the immediate building envelope and



driveway, in order to protect the native coastal bluff scrub plant community and habitats for the Smith's blue butterfly and Monarch butterflies." While the County's action does not specifically identify the seacliff buckwheat as environmentally sensitive habitat, application of this requirement by the County infers that coastal bluff scrub, seacliff buckwheat (which is the sole plant on the subject site that serves as habitat for the Smith's blue butterfly) and Monarch butterfly habitat<sup>1</sup> is considered, and protected as ESHA. Since the County's approval allows for removal and mitigation of this sensitive habitat, rather than avoidance through redesign or reduction of structural footprint, the County's action **raises a substantial issue with regards to protection of environmentally sensitive habitat.**

The project also has the potential to disrupt sensitive marine habitats adjacent to the site. As noted above, the impervious surface area of the development is substantial, exceeding 10,000 sq. ft., and surface water runoff will be increased from these impervious surfaces. The County approval also requires the existing septic tank, located very near the bluff edge, to be destroyed and a new one installed in the location indicated on plans to be approved by the Division of Environmental Health – however, that new location is not currently shown on any site plans and so cannot be evaluated. Removal of the septic system from near the bluff, as required by the County permit, will serve to reduce water quality impacts that such a system, leaching into the thin layer of marine terrace deposits and fill over granitic bedrock, might have on adjacent inter-tidal areas. However, removal activities very near the bluff edge may destabilize the bluff and cause additional sediment to enter the inter-tidal zone adjacent to the site. Since the geologic report indicates that cracks have developed between the tanks and the bluff and further failure could occur, it is important to remove the septic tank before a more catastrophic failure is caused. The County permit is conditioned (#19) to require that no construction debris be allowed to enter the marine habitat, and no erosion shall be allowed to occur as a consequence of the proposed project, and to require an erosion control plan, which should adequately ensure that no adverse impacts occur from the project. It may be necessary for such erosion control to include silt fencing around the perimeter of project activities, especially around the septic tank removal area, to ensure that sediment from this activity, as well as other construction activities do not enter the inter-tidal zone, impacting invertebrate marine organisms and reducing sea otter foraging habitat. While additional mitigation measures could be employed to reduce the amount of site coverage and amount of excavation that would be necessary for the project, the County's approved condition for requiring erosion control should serve to protect the inter-tidal habitat from sedimentation caused by the project

### c. Conclusion

The County's approval of a 10,000+ sf house is inconsistent with protection of environmentally sensitive habitat policies because the LCP requires that projects avoid significant disruption of habitat,

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<sup>1</sup> The site also includes Monterey cypress north of the driveway, which will not be impacted by development. The County has, nonetheless, required they be protected during construction. While the 1999 biological report conducted for the project indicates that Monarch butterflies may utilize eucalypts and conifers (including Monterey cypress and Monterey Pines) as winter roosting sites, a later follow-up letter report by the same consultant (dated September 21, 2003) indicates that the cypress on the subject parcel do not provide over-wintering habitat for Monarch butterflies because: 1) the stature of the trees on site is insufficient to support mass over-wintering of the butterfly; 2) the cypress trees are fully exposed to storm winds from the south/southwest, and prevailing winds from the north,, and 3) there is not adequate food source on the property (i.e., there are very few seasonal nectar sources near the property, which are necessary for nourishment).



be designed, sited and sized to minimize habitat impacts. The County's approval of the project allows development, including vegetation removal, excavation, grading, filing, and the construction of roads and structures, in environmentally sensitive (Smith's blue butterfly) habitat, which, since it is one of only two host plants that the endangered Smith's blue butterfly needs for all stages of its life, would result in the disruption of habitat value on the site. The project would remove 120 of the total 130 plants mapped on site, thus removing 92 percent of the existing habitat. While the project is required to remove invasive exotic plants and replant seaciff buckwheat using a 3:1 ratio, which will serve to restore and enhance habitat for the Smith's blue butterfly, the County did not require any modifications to the footprint or site coverage in order to limit the area of disturbance, or require a different structural design to better achieve the goal of the key policy to **maintain**, restore, and if possible, enhance Big Sur's environmentally sensitive habitats, and to ensure that development remains subordinate to the protection of these critical areas. Thus, the project is not consistent with LCP ESHA protection policies, and so **raises a substantial issue with regard to protection of ESHA.**

### 3. Hazards

The McAllister appeal raises the issue of conformance with the LCP's policies for development in hazardous areas. The project, as approved by the County, allows a 15-foot setback from the seaciff blufftop, but does not provide any evidence that such a narrow setback is adequate to avoid the need for seawalls during the development's lifespan, which is especially of concern since the site has experienced active shoreline erosion during the last El Nino event, and cracks are apparent around the existing septic tanks located near the blufftop. Also, the project's septic, drainage, and irrigation systems can saturate the bluff and diminish the stability of the site.

#### a. Applicable Policies

*LUP 3.9.1.1. Blufftop setbacks shall be adequate to avoid the need for seawalls during the development's economic lifespan.*

*LUP 3.7.3.A.9. Any proposed development within 50 feet of the face of a cliff or bluff or within the area of a 20 degree angle from the toe of a cliff, whichever is greater, shall require the preparation of a geologic report prior to consideration of the proposed project. The report shall demonstrate that (a) the area is stable for development; and (b) the development will not create a geologic hazard or diminish the stability of the area..*

#### b. Analysis of Consistency with Applicable LCP Policies

The Monterey County LCP's Big Sur Coast policies require that blufftop setbacks "shall be adequate to avoid the need for seawalls during the development's economic lifespan"<sup>2</sup> (LUP 3.9.1.1). Also, the development must not create a geologic hazard or diminish the stability of the area (LUP 3.7.3.A.9).

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<sup>2</sup> While the Monterey County LCP does not define the "economic lifespan" of a structure, most other LCPs consider the economic lifespan of a structure to be between 50 and 75 years.



Coastal Implementation Plan (CIP), Part 3, Regulations for Development in Big Sur, includes Section 20.14.080.A.1.b.2, which requires that a geologic report be prepared for projects within 50 feet of the face of a cliff or bluff or within the area of a 20 degree angle above horizontal from the face of a cliff, whichever is greater.

As the project includes development within 50 feet of the bluff face, geologic and geotechnical investigations were prepared for this site. These reports confirm that the site comprises a layer of coastal terrace alluvium perched on granite bedrock. Substantial excavation of the landform has occurred in violation of the 1977 CDP originally granted for development of this site, and is still clearly evident. The geologic report notes active sea cliff erosion, however the report does not identify predicted erosion rates, as required by Section 20.145.080.A.2.h. The report does note that “significant coastal erosion” had occurred along the southern part of the property, near the septic manholes, due to storm wave erosion at the base of the seacliff in November and December 2002. While the overall erosion rate may not be great, unanticipated events can and will occur. A future El Niño season, for example, may produce an accelerated erosion episode. One way to reduce the risk of such failure is to maximize the distance from the bluff edge. However, due to the need to accommodate the project’s great bulk, applicant’s house extends closer to the bluff edge than would a more modestly-scaled design on the same site.

And while the geological report recommends that structures be located at least 15 feet from the blufftop neither the geologic report nor the geotechnical report includes any assessment of slope stability or evidence or rationale to ensure that the setback would be adequate to avoid the need for seawalls during the development’s lifespan. In fact, the geological report states, “in light of this erosion and slumping, it appears sensible to maintain at least a 15-foot coastal setback between the seacliff and any improvements along the southern part of the property. Another method to address this concern would be placement of rip-rap along the southern seacliff to prevent erosion.” Finding 3 of the County’s approval states that these reports “provide recommended conditions and mitigation measures that provide additional assurances regarding project safety,” however they do not actually indicate that the site will not need shoreline protection during the economic lifespan of the project. Rather, the Geotechnical Report, dated December 20, 2000, notes that “the sea cliff on the south end of the site should be protected from further high surf erosion; otherwise there is a potential for future loss of land at the edge of the sea cliff. An earthquake or inclement weather as well as very high surf could promote sliding and/or erosion in the area of the crack in the ground near the sea cliff” and later recommends that “Seawall protection can be developed if this option is selected.” By noting active shoreline erosion is an ongoing concern, and recommending seawall protection as one option for continued erosion, the reports do not provide assurance that the blufftop setback is adequate to avoid the need for seawalls during the development’s economic lifespan, and so the County’s approval **raises a substantial issue with regards to Geologic Hazards.**

Also, as experience has shown, a project’s septic, drainage, and irrigation systems can saturate the bluff and diminish the stability of the site. Appellant McAllister submitted a letter excerpt from a Registered Engineering Geologist that states: “...the project has numerous significant adverse environmental impacts related to geology and soils hazards, hydrology and water quality that require the preparation of



an Environmental Impact Report.” But, this recommendation was not accepted and the County’s approval did not require applicant to reduce the excessive area of impervious surface as a means of reducing saturation, runoff and erosion impacts (i.e., through reduced roof, driveway and patio coverage). While the County approval requires the septic system be relocated, the new site has not been identified on plan maps, and so cannot be evaluated to ensure that the development will not create a geologic hazard or diminish the stability of the area.

In summary, if the proposed house is sited too close to the seaward edge of the coastal bluff, then the project could be threatened with collapse, and may require construction of a seawall or other shoreline protective devices after the project is built, which would be inconsistent with LCP policies. Imprudent handling of on-site drainage issues can further aggravate natural shoreline erosion process. However, available mitigation measures, such as the reduction of structural mass in order to reduce impervious roof area and requiring a greater setback from the bluff have not been employed.

#### c. Conclusion

Monterey County LCP Policy requires adequate setbacks to assure the development will not need shoreline protection during the life of the structure, and that geologic reports provide evidence that permitted development will not create geologic hazards or diminish the stability of the area. Since active shoreline erosion has been observed at the site, no slope stability analysis or any other evidence has been provided to show that a 15 foot setback is adequate to assure that the development will not need shoreline protection, in fact shoreline protection is actually recommended by both the geologic report and geotechnical reports, and onsite drainage may increase erosion and decrease geological stability of the site, the project is not consistent with LUP policies regarding geologic hazards. Thus, the project as approved by the County **raises a substantial issue with regards to Geologic hazards.**

### 4. Water Resources

The McAllister appeal also raises the issue of conformance with the LCP’s policies for protecting water resources.

#### a. Applicable Policies

*LUP 3.4.2.2. The County will require adherence to the best watershed planning principles including: stream setbacks, stream flow maintenance, performance controls for development site features, **maintenance of safe and good water quality**, protection of natural vegetation along streams, and careful control of grading to avoid erosion and sedimentation (emphasis added).*

##### *LUP 3.4.3.A Specific Policies*

##### *A. Water Supply and Use*

*1. Applicants for development of residential, commercial, and visitor-serving facilities must demonstrate by appropriate seasonal testing that there will be an adequate water supply for all beneficial uses and be of good quality and quantity (e.g. at least 1/2 gallon per minute per single*



*family dwelling year round) from a surface or groundwater source, **or from a community water system under permit from the County.***

*2. Development of water supplies, **or intensification of use of existing supplies from** springs, streams, wells, or **community water systems** shall be regulated by permit in accordance with Coastal Act requirements. These permits shall be in addition to any required permits from the County Health Department.*

*3. Applicants intending to utilize a water supply from a source not occurring on the parcel to be served, shall obtain any necessary rights or permits to appropriate the water from the State Division of Water Rights prior to receiving project approval from the County. The State is requested to notify the County of all applications for appropriate water rights. The County's policy shall be to protest such applications that conflict with the protection of beneficial uses of water including instream flow requirements. The County shall require riparian or groundwater users applying for development rights to perfect and record their rights to the water to minimize future conflicts. The County also encourages existing riparian users to perfect and record their water rights.*

*4. Interbasin transfer of water: No new water system and no expansion of existing water systems which transport water out of the watershed of any perennial stream shall be allowed. Undeveloped parcels outside of the watershed of origin shall not be allowed to utilize transported water. Permit applications shall demonstrate a suitable source of water not requiring establishment or expansion of, or intensification of use, of an interbasin water transfer system. Where no on-site surface water source exists, exceptions may be made on a case-by-case basis for the development of a primary residence on a vacant parcel served by a County-approved connection to an existing water system. Where -- if the total number of existing/potential vacant buildable residential parcels on such water system is more than four, such exceptions will be subject to a demonstration that:*

*a. no significant degradation of any of the Big Sur Coast's trout streams or other environmentally sensitive habitats will result, as demonstrated by an appropriate environmental assessment prepared in accordance with California Department of Fish and Game standards.*

*b. no increased water system pumping, transmission or storage capacity (other than fire reservoir capacity) will be required for the proposed development; and*

*c. such exception will not result in export of water beyond the Big Sur Coast or the authorized service area of the Carmel Riviera Mutual Water Company. or less and as authorized in the Big Sur River Protected Waterway Management Plan.*

*Water system development or expansions constructed or installed after December 31, 1976, without benefit of coastal development permit will not be considered as "existing".*

*5. Small public water systems and private water systems supplying more than one user shall conform to the California Health and Safety Code, California Administrative Code, and County Ordinance 2250 as administered by the County Health Department, consistent with other policies of this section.*



*Rivers and Streams -*

*LUP 3.4.3.B.1. The effects of all new development proposals or intensification of land use activities or water uses on the natural character and values of the Big Sur coast's rivers and streams will be specifically considered in all land use decisions. Subjects to be addressed in such evaluations include protection of scenic quality, water quantity and quality, wildlife and fish habitat, and recreational values. Land use proposals determined to pose significant impacts to the natural integrity of the stream must be modified accordingly. The County will request assistance from the Department of Fish and Game as a technical expert on wild life and fish habitat and mitigation measures.*

*LUP 3.4.3.B.33. Water quality, adequate year-round flows, and stream bed gravel conditions shall be protected in streams supporting rainbow and steelhead trout. These streams include: Garrapata Creek, Rocky Creek, Bixby Creek, Little Sur River, Big Sur River, Partington Creek, Anderson Creek, Hot Springs Creek, Vicente Creek, Big Creek, and Limekiln Creek.*

**b. Analysis of Consistency with Applicable LCP Policies**

The Big Sur Coast LUP's Specific Policies for Water Supply and Use contain a series of requirements concerning provision of adequate and safe water supplies, as a prerequisite for residential development (LUP 3.4.3.A). The appellant questions the project's compliance with these County standards.

According to the County's approval, water will be supplied to the site by the Garrapata Water Company, which draws from a well near Garrapata Creek. According to State Water Resources Control Board (SWRCB) staff, the well has been found to draw from Garrapata Creek baseflow (pers. comm.. Kathy Mrowka SWRCB, 8/13/04). Since LUP policy 3.4.3.B.3 lists Garrapata Creek as a steelhead stream water resource protection policies require that the impact of all new development proposals on these streams must be considered (LUP 3.4.3.B.1); however, the County's action does not include any discussion of this requirement. As the proposed development would cumulatively add to the amount of water diverted from the Garrapata basin, such evaluation is necessary to ensure that no significant impacts to the natural integrity of the stream will result from the approved development.

State law also requires each water system to ensure that a continuous, adequate and safe supply of domestic water is supplied to all users at all times. On September 2002, the Garrapata Water Company was informed in written correspondence, that it was not in compliance with the California Surface Water Treatment Rule (SWTR), which requires water systems to provide adequate filtration and disinfection, and required the Water Company to either develop a groundwater source that meets Title 22 quality and quantity requirements or provide treatment in conformance with the SWTR. Big Sur LUP Policy 3.4.3A.1 also requires an adequate water supply of good quality and quantity (e.g. at least 1/2 gallon per minute per single family dwelling year round) from a surface or groundwater source, or from a community water system under permit from the County.

Based on recent discussions with staff from the Monterey County Division of Environmental Health (DEH), the Garrapata Water Company first indicated it would look into options for repair of the system, and so did not recommend the County hold up the original permit. As a result, Finding 1 of the





County's Action states that the Garrapata Water Company is required to comply with State safe drinking water standards by providing adequate filtration and disinfection, and puts the Company on notice to explore costs and option to improve the system. Since September of 2002: 1) the owners of the Garrapata Water Company sued the County over its requirements that the system be modified to meet state requirements; 2) the Court found against the owners, and told the owners to cease operation of the system; 3) the owners have, however, continued to operate the system even though the County is looking for a new receiver to own and operate the system; and 4) other current users are trying to find a way to operate the water supply system as a mutual water system<sup>3</sup> (pers. comm.. Cheryl Sandoval, Monterey County DEH, 8/12/04). Thus, the system remains out of compliance with safe water drinking standards and DEH staff indicated that the Garrapata Water Company might be pumping more than their allocated water rights. Since the well is considered to pump from the underflow of the Garrapata Creek, such overdrafting might be impacting stream flows, which would be inconsistent with LCP requirements.

SWRCB staff have confirmed that a case has been filed against the Garrapata Water Company, though could not evaluate whether water rights were being violated without looking further into the files, which would not be able to occur before this item is heard by the Commission. Commission staff will continue to work with SWRCB staff to determine the status of pumping from the creek, but at the present time, with what information is known, it appears that the Garrapata Water Company may not be able to supply a continuous, adequate and safe supply of domestic water to the project and thus the County's approval of the project, which relies on water from the Garrapata Water company, is inconsistent with LCP policies.

Thus, since the project may not actually have an adequate, safe and continuous supply of water, and the expansion of the proposed water source may have cumulative adverse impacts on the condition of Garrapata Creek steelhead, approval of the project **raises a substantial issue with regards to water supply and protection of water resources.**

The LUP Water Resource policies, in section 3.4.2.2, also require that erosion and sedimentation impacts be avoided. As cited above, the location and design of development on parcels adjacent to intertidal habitat areas is subject to LUP Policy 3.3.3.B.1. The purpose of this policy is to avoid septic system percolation and sedimentation impacts. The proposed building site is on shallow coastal terrace colluvium over granite bedrock. Storm water runoff and septic system leachates from the development have the potential to adversely impact adjoining tidepools and rocky intertidal habitats that are part of the Monterey Bay National Marine Sanctuary.

While some risk reduction may be achieved through relocation of the septic system farther away from the bluff edge and use of a pump, the county failed to require that alternative designs be considered that would reduce the potential for sediments and septic system leachate, through reduced project sizing. Thus, the project **raises a substantial issue with regards to LCP water resource and water quality protection policies.**

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<sup>3</sup> According to county DEH staff, the last report in 2002 showed that 38 existing connections and 43 permitted connections.



c. Conclusion

The County approval fails to adequately protect Garrapata Creek, a listed steelhead stream, from overdrafting since it did not apply requirements to evaluate the impact that this new development proposal would have on Garrapata Creek. As the proposed development would cumulatively add to the amount of water diverted from the Garrapata basin, such evaluation is necessary to ensure that no significant impacts to the natural integrity of the stream will result from the approved development.

Furthermore, the Garrapata Water Company is out of compliance with State safe water drinking standards, and may already be drawing more water than they have been allocated. Facts described above regarding operation of the Garrapata Water Company raise concerns that project may not actually have an adequate, safe and continuous supply of water, and the expansion of the proposed water source may have cumulative adverse impacts on the condition of Garrapata Creek steelhead, thus approval of the project **raises a substantial issue with regards to water supply and protection of water resources.**

Finally, the County failed to require that alternative designs be considered that would reduce the potential for sediments and septic system leachate, through reduced project sizing. Thus, the project **raises a substantial issue with regards to LCP water resource and water quality protection policies.**

